

Memorandum

Date : February 9, 2000

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Moss Landing Power Plant Siting Committee:

To : William J. Keese, Presiding Member
Michal C. Moore, Associate Member

File: s:projects/mossland/statusrpt/sr5.doc

From : California Energy Commission - Paul Richins, Jr.
1516 Ninth Street Energy Commission Project Manager
Sacramento, CA 95814-5512

Subject : **MOSS LANDING POWER PLANT PROJECT STATUS REPORT 5**

We had planned to file the Preliminary Staff Assessment (PSA) by February 7, 2000. However, problems created by corrupt electronic files have caused a delay in our plans. We hope to correct the problem and file the PSA by Friday, February 11, 2000.

The committee schedule directs staff to complete the FSA by March 28, 2000. Originally the Section 316 (a) and (b) studies required by the Clean Water Act were to be completed by March 1, 2000. A March 1 filing of the Section 316 studies would have allowed us the necessary time to complete the biological resource and water resource section of the FSA by March 28. However, at a recent Regional Water Quality Control Board technical working group meeting held in January, Duke Energy has been requested to collect additional marine water samples. Because of the need for additional sampling, the final Section 316 studies will be delayed.

The Coastal Commission is required by state law to provide a report and recommendation to the Energy Commission on thermal power plants within the coastal zone. This report is referred to as the Section 30413 report. The Coastal Commission will also need the Section 316 studies before they will be able to complete their water resources and biological resources analysis for their report to the Energy Commission. Hopefully, the Coastal Commission will have completed their Section 30413 report to us for inclusion in the FSA, or if not completed in time, the report can be presented during evidentiary hearings.

A further complication is the timing of the findings of federal consistency. The Coastal Zone Management Act requires that an applicant for a federal permit for a project within the coastal zone prepare a consistency certification for the federal agency and the designated state coastal agency. This certification is supposed to demonstrate that the project is consistent with the state's coastal plan. If the state agency objects to the certification from the applicant, it cannot be issued. Concurrence is presumed if the state agency declines to act within six months.

Public Resources Code Section 30330 exempts Warren-Alquist projects from the consistency requirement. However, the Coastal Commission has indicated that it will require the applicant to submit a consistency certification as Coastal Commission staff believe that the federal law requires the filing, notwithstanding state law. The Coastal Commission has indicated that they will not act on it and will let the 6-month default concurrence take effect.

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A potential downside to this approach is that Duke can not start construction until the 6-month waiting period is completed even though an Energy Commission decision may have approved the project during this time period. There is also a question of when (how soon) the application for federal consistency can be filed by Duke Energy and what documents the certification must contain. If the certification must include the environmental documentation being completed by the Energy Commission, the 6-month waiting period would run after the Energy Commission's decision.

We had planned to file the FSA (Part 1) on March 28, 2000 as directed by the committee. The FSA would include all subjects except for water resources and biological resources. Part 2 would then be filed 45 days after the final Section 316 Clean Water Act studies had been accepted by the Regional Water Quality Control Board. However, due to severe workload constraints, staff recommends that the Commission adopt a performance-based schedule with a day for day slippage for the release of the complete FSA.

Your timely response to our recommendation for a change in the schedule is appreciated.

cc: Moss Landing Power Plant Project Proof of Service List
John Torrey, Duke Energy
Wayne Hoffman, Duke Energy
Bud Carney, Monterey County
Alison Dettmer, California Coastal Commission